

Robert M. Snee, OSB #853349

bsnee@integra.net

Law Office of Robert M. Snee

P.O. Box 16866

Portland, Oregon 97292

(503) 294-0411

Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

RACHEL SAWYER and DUSTIN
ARNOLD,

Case No. 3:18-cv-02128 SB

Plaintiffs,

v.

LEGACY EMANUEL HOSPITAL &
HEALTH CENTER; OREGON
DEPARTMENT OF HUMAN SERVICES
CHILD WELFARE, JAMES COUGHLIN
M.D., SUNSHINE CRONE, CAROLINA
CABARELLO,

**PLAINTIFFS' RESPONSE TO
DEFENDANT DHS AND
CABALLERO'S MOTION TO DISMISS**

Defendants.

**PLAINTIFFS' RESPONSE TO LEGACY DEFENDANT DHS AND CABALLERO'S
MOTION TO DISMISS**

INTRODUCTION

Defendants DHS and Carolina Caballero have filed a motion to dismiss Plaintiffs' Complaint, arguing that Plaintiffs claims are invalid in whole or part. Their motion should be

denied, since Plaintiffs' complaint sets out clear factually-based claims against the Defendants for violation of their constitutional rights.

ARGUMENT

I. Second Claim of Relief for seizure.

Plaintiffs' argues that since the child is not a plaintiff herein, the parents have no grounds for bringing the claim for unlawful seizure.

The U.S. Supreme Court has repeatedly affirmed that the "rights of parents to make decisions concerning the care, custody, and control of their children" are "fundamental." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). By unlawfully seizing the plaintiff's child, defendants DHS and Caballero interfered with plaintiff's fundamental right to custody of their child. Parents "have a well-elaborated constitutional right to live" with their children that "is an essential liberty interest protected by the Fourteenth Amendment's guarantee that parents and children will not be separated by the state without due process of law except in an emergency." *Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir. 1999). The wrongful seizure interfered with plaintiff's liberty interest and therefore, plaintiffs have sufficiently set forth a valid claim for relief based on the unlawful seizure.

II. Third Claim of Relief: State statute does not authorize a civil action

Defendants argue that the Third Claim of relief is based on ORS 419B.0090(4) and the statute does not provide independent authority for a free standing state claim.

Defendants misconstrue the nature of the Third Claim of Relief. The essence of the Third claim of relief is a claim for relief under §1983. By violating the state statute, ORS 419B.090(4), defendants denied "plaintiff Rachel Sawyer and Dustin Arnold of their liberty interest protected

by the Fourteenth Amendment to the United States Constitution, by denying them, without due process, their right to make medical decision on behalf of their child” (Complaint, ¶52)

Plaintiff’s third claim of relief sufficiently set forth a valid federal claim for relief under §1983 and defendants motion should be denied.

III. Improper State Defendants on all Claims

A. Defendant DHS seeks the dismissal of the State itself claiming it is protected by the Eleventh Amendment, and there is no claim for equitable relief. Plaintiffs initially filed this case in state court, where the claims against the state itself are valid, and it was removed to Federal Court by the State itself. The State should remain as defendant in this matter, but if the court dismisses the State, the dismissal as to the State should be without prejudice, to allow plaintiff to refile against the state in state court.]

B. Defendant Caballero seeks to be removed from the Third Claim of Relief alleging it is based on state law. As stated above, the Third Claim of Relief is under §1983 for denying the plaintiffs their Fourteenth Amendment rights by breaching the state law. Defendant Caballero is a valid defendant in the claim and should not be dismissed.

CONCLUSION

Defendant DHS and Caballeros’ Motions to Dismiss should be denied. If the States’s motion to dismiss is granted, it should be without prejudice.

DATED January 28, 2019.

/Robert M. Snee
Robert M. Snee, OSB #853349
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PLAINTIFFS' REPLY TO MOTION TO DISMISS
on the following:

Carolyn A. Pearson
Keating Jones Hughes PC
200 SW Market St., Suite 900
Portland, OR 97201-5730
Phone: (503) 222-9955
Fax: (503) 796-0699
Email: cpearson@keatingjones.com
Of Attorneys for Legacy Emanuel Hospital & Health Center,
James Coughlin MD and Sunshine Crone

Tracy I. White
Department of Justice
1162 Court Street NE
Salem OR 97301-4096
Phone: 1(503) 947-4700
Fax: 1(503) 947-4791
Email: Tracy.I.White@doj.state.or.us
Of Attorneys for Oregon Department of Human Services Child Welfare

by electronically mailed notice from the court to above said attorneys on said day.

DATED January 29, 2019.

/Robert M. Snee
Robert M. Snee, OSB #853349
Attorney for Plaintiffs